IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CI VIL JURISDICTION
WRIT PETITION NO. 692 OF 2007

Brian Oscar Dennis Pasgaon .... Petitioner.

V/s

The Bombay Education Society
and Ors. .... Respondents.

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Mr. Mihir Desai for the Petitioner.

Mr. S.C. Naidu for Respondent No.1.

Ms. S.M. Dandekar, AGP for Respondent Nos.2, 3 and 4.

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CORAM: V.M. KANADE, J.
DATE : 9th April, 2007

P.C.:

1. Rule.

2. Rule is made returnable forthwith by consent of the parties. Respondents waive service.

3. Heard the learned Counsel for the Petitioner and the learned Counsel for the Respondent No.1.

4. The Petitioner is challenging the order passed by the

Presiding Officer, School Tribunal whereby the Presiding Officer was pleased to dismiss the application which was filed by the Petitioner herein for setting aside the order passed by the Tribunal dated 31/03/2006 dismissing the appeal for default. The order of dismissal was passed on 31/3/2006 and the Petitioner preferred an application for restoration on 21/07/2006. In his application, he has stated that he was unwell and was taking treatment and, therefore, he was unable to attend the Tribunal on the date on which the appeal was dismissed for default.

5. The learned Counsel appearing on behalf of the Petitioner invited my attention to the Certificate which was issued by the Breach Candy Hospital dated 15th July, 2006 and another certificate of the same date issued by the same hospital. In the first Certificate, it is stated that the Petitioner was taking treatment for viral fever from March 28, 2006 to April 2, 2006 and that he was treated as OPD patient. The second Certificate states that the Petitioner was taking treatment for Enteric Fever and he was advised complete bed rest till 14th July. The learned Counsel

appearing on behalf of the Petitioner has submitted that sufficient cause is shown by the Petitioner for not appearing before the Tribunal and, therefore, the Tribunal ought to have restored the appeal and decided the case on merits.

6. Mr. Naidu, the learned Counsel appearing on behalf of Respondent No.1 vehemently opposed the submissions made by the learned Counsel appearing on behalf of the Petitioner. He has submitted that no sufficient cause has been shown for condonation of delay. He has submitted that limitation for filing an application for restoration is 30 days and unless sufficient cause is shown, delay cannot be condoned. He submitted that the Certificate at Exhibit-C merely states that the Petitioner was OPD patient and the second Certificate at Exhibit-D clearly indicates that he was advised to take complete bed rest. Mr. Naidu, the learned Counsel, submitted that nowhere in the application of the Petitioner, he has given any reason as to why his advocate did not remain present on the date on which the matter was kept for hearing. He submitted that, therefore, the reason given is not sufficient for condoning the delay and this Court,

therefore, should not interfere with the order passed by the Tribunal while exercising its writ jurisdiction.

7. In the present case, the Petitioner has attained the age of superannuation and his services were terminated when he was 59 years of age. As of today, the Petitioner is a senior citizen and it is possible that due to ailment which he had suffered during that period, he could not remain present in the Court. It is no doubt true that the Petitioner has not stated why his advocate also could not remain present on the said date. However, it is quite well settled that for the fault of the advocate litigant should not suffer and merely because he has not stated the reason why his advocate was not present that should not disentitle him from claiming restoration of the appeal. In my view, the Tribunal has clearly erred in ignoring the fact that the Petitioner is 61 years of age and the cause shown by the Petitioner appears to be probable.

8. Under the circumstances, the impugned order is set aside. The matter is remanded to the Tribunal. The Tribunal

shall hear the appeal on merits and in accordance with law. All contentions are kept open. Parties to appear before the Tribunal on 17/4/2007 at 11.00 a.m. Rule is made absolute accordingly.

(V. M. KANADE, J.)